dogs that are listed and upon which there are no delinquent taxes, constitute property in the ordinary sense, just as other domestic animals do.

C. B. G.

NEGOTIABLE INSTRUMENTS—PROVISION FOR PAYMENT OF ATTORNEY'S FEE—EFFECT—There is, it is believed, a widespread misconception as to the effect of the negotiable instrument law, upon a stipulation in an instrument for the payment of costs of collection or an attorney's fee, in case payment is not made at maturity. The courts of the different states are about evenly divided on the question whether negotiability is destroyed by such a stipulation. Selover on Neg. Inst. Law, p. 84. The federal courts uniformly hold that such a provision does not destroy negotiability. *Farmers' National Bank* v. *Sutton Mfg. Co.*, 52 Fed. 191, 17 L. R. A. 595. Previous to the enactment of the N. I. L. in Virginia, it was held that a stipulation in a note "to pay, in default of payment at maturity, ten per centum on the face of this note for attorney's fees for collection" was a penalty, and therefore was not enforceable. *Rixey* v. *Pearre*, 89 Va. 113, 117. From the language used by the court—"negotiable notes"—and the case cited—*Bullock* v. *Taylor*, 39 Mich. 137—it seems clear that the court did not hold that the provision made the notes non-negotiable, but the contrary. Therefore the N. I. L. (Pol. Sup. Sec. 2841a, p. 288), Art. 1, sec. 2, sub-sec. 5, providing that a stipulation for costs of collection or an attorney's fee in case payment shall not be made at maturity does not destroy negotiability, merely reaffirms what was probably already the law in Virginia. What is the effect upon the doctrine of *Rixey* v. *Pearre, supra?* From the fact that many blank notes are printed with a stipulation for the payment of attorney's fees in case of failure to pay at maturity, and that in many cases in the lower courts of the commonwealth, judgment has been given and execution has been issued for such penalties, it is evident that the impression prevails that the doctrine referred to has been changed by the statute aforesaid. It is submitted that such is not the effect of the statute. In equity, a promise to pay more if a stipulation be not observed, will be relieved against in this state (*Rixey* v. *Pearre, supra;* 1 Bart. Ch. Pr. 33; Sec. 3393 of the Code) and *Rixey* v. *Pearre* says that this doctrine applies in the case of such a stipulation in a note. The statute says that the presence of such a stipulation in a note does not destroy negotiability, which had already been decided in *Bullock* v. *Taylor*, 39 Mich. 137, and *Boozer* v. *Anderson*, 42 Ark. 167. See, also, *Chandler* v. *Kennedy*, 8 S. D. 56, where it is held that when a stipulation for attorney's fees is forbidden by statute, such a stipulation is surplusage, and does not destroy negotiability. Can it be said that a statute that probably reaffirmed the law in reference to the effect of such a provision on the negotiability of instruments (or, at most, changed the law on this point merely) changed *by inference* another well known principle of law? Is it not more reasonable to hold that, in jurisdictions where such a stipulation is illegal by statute or otherwise, the effect of the N. I. L. is merely to say that the presence of such a stipulation shall not destroy the negotiability of the instrument?

In discussing the effect of the stipulation in instruments for the paymcn of attorney's fee, etc., the learned author of Daniel on Negotiable Instruments (5th ed..), sections 62 and 62a, says that the cases on this subject may be divided into four classes: (1) Those sustaining both the validity of the stipulations and the negotiability of the instrument. (2) Those enforcing the stipulation, but denying the negotiability of the instrument. (3) Those maintaining the negotiability of the instrument, but regarding the stipulations as penal and void. (4) Those holding that the stipulation to pay the additional amount renders the transaction usurious and subjects the instrument to the operation of the statutes against usury. Then the learned author adds: "If the additional stipulations be regarded as in the nature cf penalties, and therefore void, they would simply be surplusage, and would not impair the negotiability of the paper. And this is the view that commends itself, as it seems to us, to judicial faver," citing *Rixey* v. *Pearre, supra; Ronald* v. *Bank of Princeton*, 90 Va. 813, 20 S. E. 780 (which holds, however, that it is too late to raise the point in the Supreme Court of Appeals). From which it is clear that there is a distinction between such a stipulation being void and making the instrument non-negotiable; and that it is perfectly compatible for the stipulation to be void and for the instrument to be negotiable, and *vice versa;* and that on the first and third classes, the N. I. L. would have no effect, whatever.

C. B. G.